

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. CR 18-223
)	Green Bay, Wisconsin
vs.)	
)	July 12, 2019
PETER BERNEGGER,)	3:30 p.m.
)	
Defendant.)	

TRANSCRIPT OF REVIEW HEARING
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES CHIEF DISTRICT JUDGE

APPEARANCES:

For the Government:	United States Department of Justice (WI-ED) Office of the US Attorney By: WILLIAM J. ROACH 205 Doty St - Ste 301 Green Bay, Wisconsin 54301-4541 Ph: 920-884-1066 Fax: 920-884-2997 william.j.roach@usdoj.gov
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For the Defendant:	PETER M. BERNEGGER 3415 Park Dr Sturgeon Bay, WI 54235 Ph: 920-810-8339 PRO SE
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U.S. Probation Office:	AMY J. KOSMOSKI
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U.S. Official Transcriber:	JOHN T. SCHINDHELM, RMR, CRR,
Transcript Orders:	WWW.JOHN SCHINDHELM.COM

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TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

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THE COURT: Be seated.

THE CLERK: The court calls Case No. 18-CR-223, United States of America vs. Peter M. Bernegger for a review hearing. May I have the appearances, please?

MR. ROACH: Good afternoon. William Roach on behalf of the Government.

MR. BERNEGGER: Peter Bernegger for Defendant.

THE COURT: And?

PROBATION OFFICER: Amy Kosmoski on behalf of Probation.

THE COURT: All right, thank you.

MR. BERNEGGER: Ah, Your Honor, I object to Amy Kosmoski being here. There's a court order that she was removed from my case for some vulgar activity that she did in front of myself and my parents who were witnesses. And I believe you signed the order -- or, I forget the magistrate judge. I move immediately that you disqualify Amy Kosmoski from this case as she already has been. It's on the record in the court order.

THE COURT: I don't know of this order, Mr. Roach. Do you know what he's talking about?

MR. ROACH: Right.

MR. BERNEGGER: And I move for a continuance until

1 there's a --

2 THE COURT: No. Sit down. Sit down.

3 MR. BERNEGGER: -- probation officer --

4 THE COURT: Ms. Kosmoski, do you know what he's
5 talking about?

6 PROBATION OFFICER: I do, Your Honor.

7 I supervised Mr. Bernegger on pretrial. He was still
8 a district in Mississippi case at that time, so any order that
9 would have been made would have been through the district in
10 Mississippi.

11 THE COURT: And was there an order disqualifying you
12 or removing you?

13 PROBATION OFFICER: I just recall that my supervisor
14 took me off the case because he alleged that I high-fived a
15 secretary.

16 MR. BERNEGGER: Objection, Your Honor. The order is
17 issued by this court. She was removed from my case.

18 THE COURT: Well, I'm not going to remove her from the
19 courtroom. My sense is she will not have much -- this is a
20 review hearing, Mr. Bernegger. Probation isn't on trial here,
21 nor are you for that matter. This is just a hearing that I set
22 at the time we set a payment schedule just to see how things
23 were going.

24 MR. BERNEGGER: Your Honor, I object because there's a
25 petition out there that specifically states that I'm facing --

1 that is alleged against me that I'm facing a revocation of
2 probation.

3 THE COURT: No, you're not.

4 MR. BERNEGGER: And that's documented,
5 document no. 11, a petition filed by Kevin Norman.

6 THE COURT: I explained this to you last time,
7 Mr. Bernegger. When you were here last time before me I
8 explained that this was probably a mistake to say -- issue a
9 show cause why your term should not be revoked.

10 If you read the entire petition, you would have seen
11 that Probation was really asking that -- the last paragraph of
12 the petition:

13 "Since his supervised release commenced on September
14 23rd, 2014, Mr. Bernegger has resided in New London, Wisconsin.
15 He has no ties to the Northern District... intends to remain in
16 Eastern District of Wisconsin through his term of supervised
17 release. Mr. Bernegger has recently reported that he has a job
18 waiting for him in Florida when his supervised release is
19 completed. When asked why he can't accept the job now, he
20 stated the company *doesn't want to deal with the government*. As
21 court intervention is necessary, we would ask Your Honor to
22 order a Notice to Appear to address his lack of payment and set
23 a more clear condition as far as restitution payment is
24 concerned. Our office has previously asked Mr. Bernegger to
25 sign a waiver agreeing to modification of his conditions, but he

1 declined."

2 So I think if you had read it all, you would have seen
3 that they were seeking a modification. And, in fact, this is
4 clear from document 2, which is the Request for Modifying the
5 Conditions or Term of Supervision with Consent of the Offender
6 they asked me at that time to modify. I directed the clerk --
7 or without consent of. I think I directed the clerk at that
8 time to accept jurisdiction and schedule a hearing for
9 modification of conditions. This was back in December.

10 Unfortunately they accepted supervision, that got
11 done, but we did not -- the clerk's office didn't schedule the
12 hearing to modify your conditions. Obviously conditions had to
13 be modified 'cause no one had set a payment schedule. All that
14 read was that you owed whatever, I forget the amount, some --
15 over a million dollars in restitution, well over a million
16 dollars in restitution and had paid nothing.

17 And no one expects -- from what I know of your
18 financial resources -- you to pay over a million dollars in
19 restitution, even though that's apparently what the court found
20 you had defrauded people from, but they did expect you to make
21 some sort of good faith effort.

22 So when you were here last in front of me, I made it
23 clear that we were not seeking to revoke your supervision. We
24 wanted to set a payment schedule. I set a payment schedule.
25 And I took into consideration the fact that you were not -- did

1 not have rental or mortgage obligations, and that you seemed to
2 be healthy and you even told Probation at one time you had a job
3 waiting for you in Florida.

4 You indicated at that time that you had significant
5 health problems that prevented you from being able to hold a
6 job. I said that would certainly be an excuse or a
7 justification for not making payments, but you would need to
8 establish that through medical reports.

9 Presumably if you have such severe health problems you
10 have doctors that you had seen that have noted your health
11 problems, that have put you under restrictions that somehow
12 prevent you from work. You're supposed to provide that
13 information to your probation officer.

14 My understanding, though, from the memo I received,
15 and I think this was from Mr. Kevin Norman -- who apparently is
16 on vacation, Ms. Kosmoski?

17 PROBATION OFFICER: Yes, Your Honor.

18 THE COURT: So you're here to take notes, is that
19 essentially what your role is? You're not supervising
20 Mr. Bernegger.

21 PROBATION OFFICER: I'm not. I've communicated with
22 Mr. Norman, though, about his compliance so that if the Court
23 should have any questions I'm prepared to answer.

24 THE COURT: Yeah. Well, it does seem to me from my
25 review of Mr. Norman's report that Mr. Bernegger was looking for

1 employment.

2 He has not provided the medical attention -- he's
3 provided a lot of medical information, but none that indicates
4 any severe medical condition that, you know, with restrictions
5 that prevent him from working. But if I recall correctly, it
6 appeared he has consistently provided our office with employment
7 search efforts. Also provided cash flow statements and things
8 of that nature.

9 So, Mr. Bernegger, I guess what we put it on for is to
10 address how you're doing. And I recognize you want to go back
11 and make this your case against Probation, but that's not the
12 purpose of today's hearing. I dismissed your action against the
13 probation agents. If you want to bring that action, if you want
14 to appeal that, that's your choice. This is about you, though,
15 it's not about Probation.

16 And the question here is what can you tell me about
17 your efforts to find employment or what medical conditions
18 really prevent you from being able to make some effort to pay
19 something toward the restitution. And as I understand it, the
20 only payments made toward the immense amount of restitution you
21 owe is -- was through tax intercepts that happened not with your
22 assistance but despite your failure to make any payments.

23 So what can you tell me about your job search or your
24 medical conditions?

25 MR. BERNEGGER: Well, then I want to call Amy Kosmoski

1 as my first witness to the stand to put on evidence and
2 establish a record, Your Honor.

3 THE COURT: No, we're not going to have evidence.
4 Just tell me what you -- what your condition is. She doesn't
5 know your condition. You're the one --

6 MR. BERNEGGER: I filed the --

7 THE COURT: -- with direct knowledge of what you've
8 done and what your condition is. Ms. Kosmoski has no
9 information. She's here, as she said, simply to report to her
10 office and Mr. Norman.

11 MR. BERNEGGER: I can use Ms. Kosmoski as a witness to
12 introduce evidence to the Court, answers that you're asking.

13 THE COURT: No, I'm asking you. I'm asking you what
14 have you done to try to find employment and what evidence do you
15 have or what is your medical condition?

16 MR. BERNEGGER: You just asked me what evidence, but
17 you won't let me present it. I object to that.

18 THE COURT: Why would I not -- why would I ask
19 somebody else to tell me what you have done?

20 MR. BERNEGGER: First, Your Honor, I asked to clarify,
21 is document no. 11, which is petition no. 2, filed on May 3rd,
22 is that dismissed? Is that what I understand you just told me?

23 THE COURT: Well, to the extent that it asks for
24 revocation, it's denied.

25 MR. BERNEGGER: And that's the first I heard of that.

1 THE COURT: Well, no, I explained this at the last
2 hearing, Mr. Bernegger.

3 MR. BERNEGGER: I object. I have a transcript with
4 me. I've read it 10 times. You did not dismiss this petition
5 of revocation against me.

6 THE COURT: I didn't dismiss it. I said no one was
7 seeking to revoke your supervision on that day. And frankly, no
8 one is seeking to revoke your supervision now.

9 You were asked -- I modified the conditions, as I
10 indicated. And the purpose of the modification was to have you
11 make some payments before your supervision expires, as I
12 understand it, in September.

13 I'm not sure, Mr. Roach, is there a basis or grounds
14 or a lawful way we can extend supervision so he can make some
15 payments or are we -- is this at the end of it and it becomes a
16 financial --

17 MR. ROACH: This is a significant FLU issue. The
18 defendant has been ordered. I asked at the last hearing, made
19 clear that the defendant be ordered as a condition of his
20 release to comply with FLU documents. The defendant has --

21 MR. BERNEGGER: Objection, Your Honor.

22 MR. ROACH: Can I finish?

23 THE COURT: No, no. Let him finish, Mr. Bernegger,
24 then I'll ask you your position. He's not offering evidence,
25 he's offering a history and procedural information.

1 Go ahead, Mr. Roach.

2 MR. ROACH: The government believes a reasonable
3 condition of his supervised release is that he comply with any
4 FLU requests, financial litigation unit requests from our office
5 to supply financial statements, financial documents in the
6 interests of continuing to honor his restitution requirement,
7 \$1.725 million.

8 The defendant -- when I brought this to the attention
9 of the parties --

10 Again, the defendant's well aware of his FLU
11 requirements. When I brought this to the attention of the
12 parties at the last hearing on May 24th, the Court agreed that
13 that was a valid condition of his supervised release, that he
14 comply with presenting any financial-related documents to
15 Probation, to the Court, to the FLU office, our office, and I
16 thought it was made clear.

17 THE COURT: Is it not in the -- I think I modified
18 conditions and included the payment schedule, did it include the
19 financial responsibility reporting?

20 MR. ROACH: The Court said the general phrasing of the
21 supervised release condition included and encompassed FLU. It
22 does not specifically mention the acronym "FLU."

23 THE COURT: What is the condition you're referring to?

24 MR. ROACH: It's the -- I had it here a second ago.

25 (Brief pause.)

1 MR. ROACH: The specific supervision conditions. Had
2 it here a second ago.

3 THE COURT: I see the order entered on May 24th --
4 actually June 4th. Well, nunc pro tunc May 24th, modified the
5 conditions by adding that he uses best efforts to find and hold
6 lawful full-time employment, and that he pay restitution at a
7 rate of \$100 per month or 20 percent of his net income,
8 whichever is greater.

9 Those were the conditions added at that time. Were
10 there other conditions in the judgment itself?

11 MR. ROACH: There are. I know we discussed the
12 specific phrasing of that -- of the condition involving his
13 requirement to comply with submitting financial documents.

14 I know there's an order from the Northern District of
15 Mississippi. It is document no. 454 in their case that reads,
16 "The defendant shall provide to the U.S. Probation Service full
17 disclosure of his financial status and fully cooperate regarding
18 his financial status while under supervision."

19 THE COURT: Okay. Mr. Bernegger, that would include
20 that you cooperate and provide the information that the FLU unit
21 of the U.S. Attorney in the Eastern District of Wisconsin needs
22 in order to assess and collect, if it's possible, restitution.
23 You may speak now and tell me what your objection is and why you
24 haven't done that.

25 MR. BERNEGGER: I have several objections, Your Honor.

1 First off, I have given zero -- I was given zero notice that
2 this issue would be brought up today.

3 Also, I asked my probation officer twice, in writing,
4 to provide me with the written FLU condition. Okay? The court
5 order. He never did, with the exception of the document that
6 Mr. Roach is just saying.

7 However, first off, the text order that was issued by
8 you yesterday on July 10th, document 97, says, quote, "The
9 hearing will address defendant's current efforts to pay
10 restitution and his explanations for his failure to do so. If
11 additional time is necessary ..." blah, blah, blah.

12 I was not noticed that a FLU condition was going to be
13 heard today or argued today, and I had no adequate notice. And
14 I would request again to call Amy Kosmoski to the witness stand
15 so I can enter evidence and show that that's not a condition.

16 MR. ROACH: That's not true, Judge. The update for
17 the 7/12/19 review hearing --

18 MR. BERNEGGER: I'm not done yet.

19 MR. ROACH: -- dated July 8th --

20 MR. BERNEGGER: I'm not done yet. Objection.

21 MR. ROACH: -- July 8th --

22 MR. BERNEGGER: I was looking for a document.

23 THE COURT: Yeah. What document are you looking for?

24 MR. BERNEGGER: Document no. 56.

25 THE COURT: Okay. You look for your document.

1 Mr. Roach, what were you saying?

2 MR. ROACH: Mr. Norman's update memo dated July 8th,
3 "Update for July 12th Review Hearing," specifically lists in his
4 recommendation: "We would request that the Court order
5 Mr. Bernegger to fully cooperate with FLU and provide them with
6 any documentation they request."

7 Mr. Norman and Mr. Bernegger have gone back and forth
8 through May, June, July about the FLU documents. Mr. Norman has
9 sent the FLU documents to Mr. Bernegger, Mr. Bernegger refuses
10 to fill them out. He is in possession of what we want.

11 THE COURT: Okay. So he has been sent the FLU
12 documents, "FLU" meaning the financial litigation unit --

13 MR. ROACH: -- unit. Financial statements and such.

14 THE COURT: And these are --

15 MR. ROACH: Mr. Bernegger has responded saying *show me*
16 *the condition that requires me to fill these documents out.*

17 THE COURT: And you have shown him. You said, "with
18 the exception of the order that Mr. Roach read."

19 I take it, Mr. Bernegger, you have the order that
20 Mr. Roach read from the Northern District of Mississippi that
21 ordered you to comply with the providing of financial
22 information?

23 MR. BERNEGGER: Oh, I have the transcript, Your Honor,
24 but it doesn't say that.

25 But first off, what he just read of on July 8th, I

1 could not access on PACER.gov nor was I ever served a copy. And
2 that's the first I ever heard of it when he read those words, a
3 July 8th document that Kevin Norman filed. It's sealed. I
4 can't -- I can't look at it on PACER. I did not receive it in
5 the mail. No one handed me a copy.

6 THE COURT: Okay.

7 MR. BERNEGGER: Okay?

8 THE COURT: Yeah, that's the problem --

9 MR. BERNEGGER: So I had no clue --

10 THE COURT: That's a problem because I think
11 Mr. Norman is used to cases where attorneys are on both sides.
12 And if he's going to send a notice to -- for a review hearing,
13 he needs to give Mr. Bernegger a copy of the review hearings
14 that he would file with the court. So, Ms. Kosmoski --

15 MR. BERNEGGER: And, Your Honor, I object --

16 THE COURT: Mr. Bernegger, let me -- don't talk over
17 me.

18 Ms. Kosmoski, would you remind Mr. Norman of that so
19 that --

20 PROBATION OFFICER: I think --

21 THE COURT: -- if he's going to send something to the
22 court that is going to be in the record concerning
23 Mr. Bernegger, Mr. Bernegger is not represented by counsel so he
24 needs a copy. Is there a problem with that?

25 PROBATION OFFICER: No. I'll review it with the clerk

1 of courts, too.

2 THE COURT: Okay. Now, Mr. Bernegger, what were you
3 going to say?

4 MR. BERNEGGER: Your Honor, the prosecutor, Mr. Roach,
5 is misrepresenting what the Mississippi court ordered. And
6 first off, it's document no. 458. It states on page 32, line 9,
7 "The defendant shall participate in a debtor's examination as
8 requested by the government."

9 I did. I did that. In fact, at the May 24th hearing,
10 Mr. Roach admitted that I did that. It's in the transcript of
11 the May 24th hearing. I complied with the FLU requirement.
12 There's no -- it doesn't even -- first off, it doesn't even
13 state the word "FLU" or "financial litigation unit" at all
14 anywhere. Okay?

15 THE COURT: Okay. Let me go back to Mr. Roach.
16 Mr. Roach, did you say there was a separate order aside from
17 what Mr. Bernegger --

18 MR. ROACH: I'm looking at an order. It's document
19 no. 454 from the court. And the order details reasons -- this
20 related to a prior revocation hearing where Mr. Bernegger wasn't
21 making restitution payments and doing other things, and this
22 specific order lists the same terms of supervised release that
23 he had always been under --

24 THE COURT: Okay.

25 MR. ROACH: -- prior to that.

1 THE COURT: Okay. Let me make things clear,
2 Mr. Bernegger. Now, I recognize you did not receive notice that
3 we would address FLU today and -- because you didn't get a copy
4 of Mr. Norman's report to the court. I don't find that
5 prejudicial, though. If I'm wrong you can tell me and you
6 can -- you can ask for reconsideration. But at this time I am
7 going to order you to complete the financial litigation unit's
8 questionnaire --

9 Is that right, Mr. Roach?

10 MR. ROACH: It's a debtor statement. It's also
11 financial statement and related documents, including tax
12 returns, documentation of income, bank statements and the like.

13 THE COURT: Okay. I'm directing -- and these are the
14 documents that Mr. Norman has provided you. I'm directing that
15 you complete those so that Probation has the information it
16 needs concerning your financial situation so they can assess
17 whether or not you're able to pay anything.

18 Now, how lengthy are these documents, Mr. Roach?

19 MR. ROACH: They're multiple pages. As the defendant
20 said, he was ordered to complete them in 2016, some time ago,
21 but --

22 THE COURT: Ms. Kosmoski has a copy?

23 MR. ROACH: -- time has passed.

24 THE COURT: Can you show me?

25 Yeah, okay. So it's entitled, "Financial Statement."

1 And it's in the United States District Court for the Eastern
2 District of Wisconsin. And it is a seven-page form with a
3 attachment that asks -- you know, the listing of like furniture,
4 VCRs, things like that. Tools. And that attachment is -- four
5 pages.

6 So I'm going to direct that Mr. Bernegger complete
7 this financial statement and return it to Mr. Norman within two
8 weeks of today's date. So that would be what, the 26th of July?
9 25th of -- no, July 26th. Thank you.

10 And I don't find it prejudicial that Mr. Bernegger did
11 not have specific notice that this would be addressed. I think
12 he's aware that his ability to pay restitution is really the
13 focus of the hearings. And this relates to that. So I'm going
14 to direct that you do that, Mr. Bernegger. And we'll modify the
15 condition.

16 Do we have -- the conditions that he's under are
17 attached to the judgment of the district -- the judgment from
18 the District of -- the Northern District of Mississippi?

19 MR. ROACH: I believe so.

20 THE COURT: I think we should -- we need -- since now
21 I have this case and we've added conditions, I imagine I
22 should -- do I have jurisdiction to amend a judgment from that
23 court? Or how -- I guess I'll just order that these conditions
24 apply. And this condition and the other conditions, since this
25 court is now -- has the case transferred -- the case has been

1 transferred to me, I'll order that you do that, Mr. Bernegger.

2 I should have said at the outset, I know Mr. Bernegger
3 filed a number of motions today. There's one that I think I
4 should address and should have addressed right away, that is,
5 demand for my recusal. I'm going to deny that. There is no
6 basis for my recusing myself. I'm satisfied that I'm able to
7 deal with this case fairly and I think I've done so. I also
8 don't want to turn -- or direct -- or transfer that case to
9 another judge in the district who are all overburdened. And I
10 don't think they'd be in any better position to handle it than I
11 would be, especially since they're in Milwaukee and I'm in Green
12 Bay.

13 The other motions Mr. Bernegger have filed are
14 essentially against seeking to compel members of the probation
15 office to do certain things, to appear in certain ways; as he
16 said, provide him evidence.

17 There is no issue here today other than
18 Mr. Bernegger's ability and his history of trying to comply with
19 the conditions that we've imposed. Mr. Bernegger is in the best
20 position to know that. And Mr. Bernegger needs to establish
21 that there is some basis -- I'm not going to simply allow him to
22 call people whoever he wants for any purpose.

23 If he establishes that there is some cause, some
24 relevant purpose of calling a member of probation to testify,
25 I'd certainly listen to that. But where the question I've asked

1 him is what have you done to find employment and what have you
2 done -- what are your physical problems that prevent you from
3 working, he's the one in the best position to know that. And
4 Ms. Kosmoski is not a doctor, nor was she with him when he
5 complied, nor is she even the agent handling his case. And
6 whatever the agent would have would have come presumably from
7 Ms. Kosmoski.

8 Mr. Norman, although, like I said at the beginning,
9 has indicated that it appears that "Mr. Bernegger has
10 consistently provided our office with employment search
11 efforts." And Mr. Norman isn't here.

12 So I take it from Mr. Norman's update to the review
13 hearing -- and a copy of this should be provided to
14 Mr. Bernegger. I'll direct the clerk to mail it to him.

15 But, Mr. Roach, am I correct, there's no action being
16 sought in terms of revocation, or there's no allegation that he
17 has failed to comply with the conditions of supervised release
18 that I sent?

19 MR. ROACH: Other than the FLU related matter and the
20 Court's addressed that here today.

21 THE COURT: Yeah, we've made that clear now to the
22 extent that it wasn't already clear to Mr. Bernegger that he
23 needs to complete that. And so I'll --

24 MR. BERNEGGER: Your Honor, I was waiting to -- I
25 don't want to overtalk, over-speak you, but I'm objecting to the

1 FLU condition. The FLU condition is a special condition. I was
2 required by the Seventh Circuit, it's mandated that I'm noticed
3 well in advance of the hearing that a special condition would be
4 imposed, whether it's modified or added, before the hearing
5 starts, which means at least three days according to the Seventh
6 Circuit.

7 And I'm also required to be noticed in advance, a Rule
8 32.1(b) (2) (A) and (B). And the Seventh Circuit backs it up that
9 I'm supposed to be noticed if it's mandated. If it's a special
10 condition, I have to be adequately noticed well before the
11 hearing starts and I wasn't. I object to that.

12 MR. ROACH: Judge, this is not a new condition. The
13 order that was previously in place not only referenced the
14 financial document requirement, but there was also a specific
15 supervised release condition that he shall submit to a debtor's
16 examination conducted by the FLU unit of the U.S. Attorney's
17 Office.

18 That's a little ambiguous. It came to the court from
19 Mississippi, whether it's referencing this court or whether it
20 was simply referencing the supervised release that was in
21 existence in '16. So it's been a part of his condition.

22 MR. BERNEGGER: No, objection, Your Honor.

23 THE COURT: Okay.

24 MR. ROACH: We're just asking for a new --

25 THE COURT: Okay. Hold on a minute. Hold on a

1 minute.

2 MR. ROACH: We're simply asking for a new exam because
3 the other one is dated, at this point.

4 THE COURT: Okay. Okay. Mr. Bernegger?

5 MR. BERNEGGER: I move to strike that written order
6 because the verbal order in document no. 458, page 32, line 8
7 and 9 -- I'm sorry, 9 and 10, line 9 and 10 -- takes precedence
8 over a written order. So I move to strike the written order.

9 THE COURT: The oral order says what, that you did
10 comply with that?

11 MR. BERNEGGER: The oral order says, again -- and this
12 is document no. 458, page 32, lines 9 and 10. It says, "The
13 defendant shall participate in a debtor's examination as
14 requested by the government." I did. I did it.

15 THE COURT: Okay.

16 MR. BERNEGGER: Mr. Roach admitted I did it at the May
17 24th hearing.

18 THE COURT: Okay. So your argument is that you've
19 complied with that condition.

20 MR. BERNEGGER: I have.

21 THE COURT: All right. I'm going to vacate my
22 previous order. We're going to be back in this court on next
23 Friday, July 19th, at 3:30 in the afternoon. And the issue to
24 address is the addition of the FLU financial responsibility
25 statement. Mr. Bernegger, be prepared to address it.

1 I am proposing that you be given one week until July
2 26th to complete that form. You can argue to the contrary next
3 week and tell me why that should not be ordered based upon your
4 crime and the history in the case, and I'll listen at that time.

5 MR. BERNEGGER: Your Honor, I already have a motion
6 filed a couple weeks ago regarding challenging the FLU where the
7 Tenth Circuit Court of Appeals, the D.C. Circuit Court of
8 Appeals, the Federal Tax Court all ruled that FLU cannot meddle
9 in a district court's restitution order and cannot take any
10 steps whatsoever to collect the data.

11 THE COURT: Okay. I will look at your motion.

12 MR. BERNEGGER: It's already on the record.

13 THE COURT: It's document number what?

14 MR. BERNEGGER: I don't have the document number
15 handy.

16 THE COURT: Okay. Well, I will review that motion.
17 Mr. Roach, you review it as well, and be prepared to respond.

18 MR. ROACH: Thank you.

19 THE COURT: Okay. Anything else?

20 MR. BERNEGGER: Yes, Your Honor. On your text order
21 yesterday it says my "explanations for his failure" -- me -- to
22 pay restitution. I paid the restitution, the hundred dollars.
23 I paid it on June 23rd.

24 THE COURT: Well, that's not restitution, that's
25 your -- oh, you paid a hundred dollars?

1 MR. BERNEGGER: I paid a hundred dollars.

2 THE COURT: So you have been making your payments. So
3 you're making the payments and you're looking for employment.

4 MR. BERNEGGER: But I would move the Court to change
5 the docket to correct it so it's accurate.

6 THE COURT: Okay. Well, if you've made payments --
7 and I didn't realize that because I thought you were unable to
8 find employment and that your health prevented you from making
9 payments. So I'll direct that the clerk, the minutes reflect --

10 First of all, Ms. Kosmoski, is that -- the clerk
11 indicates he's made the payment?

12 MR. ROACH: The updated memo indicates that defendant
13 made a payment, one \$100 payment, on May 24th.

14 THE COURT: May 24th. Has he made a payment since
15 then though?

16 MR. ROACH: The update memo dated July 8th does not
17 indicate any other payments.

18 THE COURT: Did you make a payment after that?

19 MR. BERNEGGER: No, I did not. I made a payment on
20 June 23rd. And I want to submit to the Court the receipt for
21 it.

22 THE COURT: No, Ms. Kosmoski is admitting that. Is
23 that right?

24 PROBATION OFFICER: The report lists that he made a
25 payment on June 21st.

1 THE COURT: Okay. And we're in July. So he's
2 current. So the minutes should reflect that Mr. Bernegger is
3 current on his payments.

4 MR. ROACH: My error. I looked at the wrong date.
5 June 21st.

6 THE COURT: Okay. So, you know -- so we'll address
7 that additional condition next Friday at 3:30.

8 And we will address Mr. Bernegger's argument that such
9 a condition is improper based on caselaw in other circuits. I'm
10 not sure it meddles in restitution orders. Ultimately it does
11 seem to me when someone owes \$1.7 million in restitution as a
12 result of a criminal conviction, it does seem that getting
13 financial information from that person is a reasonable effort to
14 enforce the judgment. But I'll look and see if Mr. Bernegger
15 has --

16 MR. BERNEGGER: Your Honor, what I'd like to state for
17 the record is that on June 3rd is the very first time ever that
18 Kevin Norman or anybody else asked me for FLU information with
19 the exception back in 2016, which I already satisfied.

20 THE COURT: Okay.

21 MR. BERNEGGER: June 6 is when Mr. Norman emailed me
22 requesting probationary forms, Probationary Form 48 and 48B to
23 be filled out, which is a net worth statement and a cash flow
24 statement. I filled those out and they were returned to him on
25 time. He has my financial information already.

1 THE COURT: Okay. Well, that's --

2 PROBATION OFFICER: That's accurate, Your Honor.

3 THE COURT: That's accurate. Mr. Roach, now, FLU is
4 getting ready for a time when he's off probation or off his
5 supervision?

6 MR. ROACH: Yes.

7 THE COURT: And his five years on supervision will
8 expire in September.

9 MR. ROACH: Correct. That's why it's imperative that
10 FLU has those documents and can start making plans for attempted
11 collection of restitution and making victims whole.

12 THE COURT: And, Mr. Bernegger, is it your position
13 that FLU is not entitled to that information at all or just not
14 now?

15 MR. BERNEGGER: The three case laws that I cited in
16 brief, but they are written in detail in the pleadings that are
17 before this court, filed maybe two weeks ago, maybe three weeks
18 ago --

19 THE COURT: Mr. Bernegger, you file an awful lot.
20 Just let me say that. You file so many things. And in all
21 honesty, I don't have time to keep up on it all.

22 MR. BERNEGGER: It has been ruled by two federal
23 circuit courts and also the Federal Tax Court, and those cases
24 are cited in my pleadings, is that they have determined by a
25 statutory construction is that FLU has no business getting

1 involved in a U.S. district court's restitution order until the
2 person is off of probation.

3 THE COURT: Okay.

4 MR. BERNEGGER: And it's the same thing as if the BOP
5 was meddling right now in my restitution when I'm on supervised
6 release. They don't have any authority to do it. And that's
7 what those three federal courts ruled.

8 THE COURT: Okay. Were those collection efforts or
9 efforts to get information?

10 MR. BERNEGGER: It was both. And the rulings were
11 stating specifically that any attempt for a debt collection
12 could not be done specifically when the person was current on
13 his restitution-ordered monthly payment, which I am.

14 THE COURT: All right.

15 PROBATION OFFICER: So, Your Honor, it's very common,
16 in fact, a practice of our office to connect the financial
17 litigation unit and our clients as they prepare to be
18 terminated, our office typically makes a recommendation about
19 whether someone is willfully paying or willfully not paying, and
20 in that consideration we consider their willingness to cooperate
21 with FLU.

22 So I do just want to put on the record that if
23 Mr. Bernegger refuses to cooperate with FLU, that would be
24 something our office would consider then in a recommendation
25 about his supervision continuing or not continuing.

1 THE COURT: Is there -- I mean, is there a possibility
2 that your office may recommend an extension of supervision of
3 Mr. Bernegger?

4 PROBATION OFFICER: I believe --

5 THE COURT: He had five years.

6 PROBATION OFFICER: Correct.

7 THE COURT: That's the maximum amount.

8 PROBATION OFFICER: I'm not certain on that.

9 THE COURT: Yeah. Well, that issue isn't here. And
10 certainly we would certainly want to give lots of notice before
11 we did that.

12 PROBATION OFFICER: Right.

13 THE COURT: Mr. Bernegger, if you remain current and
14 you're right in your interpretation of FLU, then I won't
15 reimpose that condition. I'll look closely at both those cases.

16 Okay. Anything else?

17 MR. BERNEGGER: No.

18 MR. ROACH: No.

19 THE COURT: All right. Thank you.

20 (Hearing concluded at 4:05 p.m.)

21 * * *

C E R T I F I C A T E

I, JOHN T. SCHINDHELM, RMR, CRR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified July 26, 2019.

/s/John T. Schindhelm

John T. Schindhelm

John T. Schindhelm, RPR, RMR, CRR
United States Official Reporter
517 E Wisconsin Ave., Rm 236,
Milwaukee, WI 53202
Website: WWW.JOHNSCHINDHELM.COM

